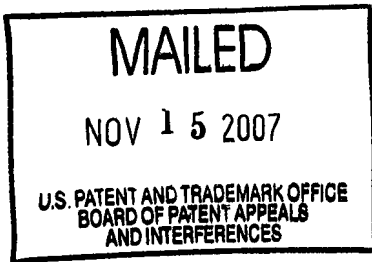


UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES



Ex parte ROBERT SKVORECZ

Appeal No. 2006-1989
Application 09/772,278

ORDER DENYING ORAL HEARING

On August 22, 2007, appellant filed a reconsideration of denial of Request for Rehearing. This request is denied. 37 CFR § 41.47 sets forth the requirements for the request for an oral hearing and is reproduced below.

§ 41.47 Oral hearing.

(a) An oral hearing should be requested only in those circumstances in which appellant considers such a hearing necessary or desirable for a proper presentation of the appeal. An appeal decided on the briefs without an oral hearing will receive the same consideration by the Board as appeals decided after an oral hearing.

(b) If appellant desires an oral hearing, appellant must file, as a separate paper captioned "REQUEST FOR ORAL HEARING," a written request for such hearing accompanied by the fee set forth in § 41.20(b)(3) within two months from the date of the examiner's answer or supplemental examiner's answer.

(c) If no request and fee for oral hearing have been timely filed by appellant as required by paragraph (b) of this section, the appeal will be assigned for consideration and decision on the briefs without an oral hearing.

(d) If appellant has complied with all the requirements of paragraph (b) of this section, a date for the oral hearing will be set, and due notice thereof given to appellant. If an oral hearing is held, an oral argument may be presented by, or on behalf of, the primary examiner if considered desirable by either the primary examiner or the Board. A hearing will be held as stated in the notice, and oral argument will ordinarily be limited to twenty minutes for appellant and fifteen minutes for the primary examiner unless otherwise ordered.

Appellant has stated in the reconsideration of denial of request for oral hearing that "In the decision of the Board of Appeals dated March 28, 2006, on page 22 thereof, it states that "the (alleged) prima facie case of anticipation (of claims 1 and 2 under 35 USC102b) may be rebutted by evidence (emphasis added) showing that the prior art products do not necessarily possess the characteristics of the claimed product, In re Best 562

f 2d at 1255”. Appellant requires this hearing to present evidence requested by the Board in its decision.” The Board has not requested this information, and it does has the authority to do so under 37 CFR § 41.50(d).

37 CFR § 41.33 (d) dictates the appropriateness and timeliness of all evidence provided after the filing of an Appeal,

37 CFR 41.33. Amendments and affidavits or other evidence after appeal.

(d)(1) An affidavit or other evidence filed after the date of filing an appeal pursuant to § 41.31(a)(1) through (a)(3) and prior to the date of filing a brief pursuant to § 41.37 may be admitted if the examiner determines that the affidavit or other evidence overcomes all rejections under appeal and that a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented has been made.

(2) All other affidavits or other evidence filed after the date of filing an appeal pursuant to § 41.31(a)(1) through (a)(3) will not be admitted except as permitted by §§ 41.39(b)(1), 41.50(a)(2)(i) and 41.50(b)(1).


Therefore, in light of the discussion above, and that the initial request for Oral Hearing is considered untimely, Appellants reconsideration of denial of request for oral hearing is denied.

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Application 09/772,278

Accordingly, it is

ORDERED that the Request for Rehearing filed May 21, 2007 will be
decided based upon the written record before the Board of Patent Appeals
and Interferences.

BOARD OF PATENT APPEALS
AND INTERFERENCES

By: 

PATRICK J. NOLAN
Deputy Chief Appeals Administrator
(571) 272-9797

PJN

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